



OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

(R 75-389)
75-220
BRUCE E. BABBITT
ATTORNEY GENERAL

July 28, 1975

Mr. G. C. Hodges
Manager Accounting Office
Finance Division
Department of Administration
The Capitol
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL

Dear Mr. Hodges:

This letter is in response to your letter to this office dated June 16, 1975, requesting the opinion of this office whether the appropriation set forth in Chapter 140, Laws of 1975 (House Bill 2416) to the State Department of Education to fund the state's obligation to provide ninety per cent of the excess costs of special education became immediately effective upon the bill's execution by the Governor or whether, since the bill was not passed as an emergency measure, it does not become effective until the 91st day following the Legislature's adjournment.

The applicable Arizona constitutional provision is Article 4, Part 1, Section 1(3), which pertains to the referendum power reserved to the people and the relevant part of which states as follows:

The second of these reserved powers is the Referendum. Under this power the Legislature, or five per centum of the qualified electors, may order the submission to the people at the polls of any measure, or item, section, or part of any measure, enacted by the Legislature, except laws immediately necessary for the preservation of the public peace, health, or safety, or for the support and maintenance of the departments of the State Government and State institutions; but to allow opportunity for Referendum Petitions, no Act passed by the Legislature shall be operative for ninety days after the close of the session of the Legislature enacting such measure, except such as require earlier operation to preserve the public peace, health, or safety, or to provide appropriations for the support and maintenance of the Departments



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of the State and of State institutions;
Provided, that no such emergency measure shall be considered passed by the Legislature unless it shall state in a separate section why it is necessary that it shall become immediately operative, and shall be approved by the affirmative votes of two-thirds of the members elected to each House of the Legislature. . . .

That provision has been interpreted by the Arizona Supreme Court in Garvey v. Trew, 64 Ariz. 342, 170 P.2d 845 (1946), as exempting from the referendum requirement, under certain conditions, support and maintenance appropriations for existing state departments and institutions. In so interpreting that provision, the Supreme Court in Garvey stated as follows:

. . . [W]e are forced to the conclusion that support and maintenance appropriations for existing state departments and institutions are not subject to the referendum. It is to be understood that such appropriations are exempt only when made in support and maintenance of the existing functions of the department or institution. If the appropriation is incidental to a measure, giving new or additional power or functions to a department or institution, and for the support and maintenance of such new power or functions, it is subject to the referendum unless passed as an emergency measure. . . . 64 Ariz. at 355.

As a result of the holding in Garvey v. Trew, legislation which appropriates money to existing state departments and institutions for the support and maintenance of the existing functions of such departments or institutions becomes effective when signed by the Governor, although not passed as an emergency measure. (See Attorney General Opinion No. 56-79, which also so interprets the Garvey case.)

It seems clear from our reading of House Bill 2416 that the excess cost appropriation is an appropriation to an existing state department to fund the existing

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responsibility of that department relating to special education. In light of the foregoing, it is our belief that the appropriation for special education set forth in House Bill 2416 became effective on June 13, 1975, the date that said bill was approved by the Governor.

Should you have any questions, please let us know.

Sincerely,

BRUCE E. BABBITT
Attorney General

A handwritten signature in cursive script, appearing to read "Alan S. Kamin".

ALAN S. KAMIN
Assistant Attorney General

ASK:lc